

**Introduced by Senator Leno**

(Coauthors: Assembly Members Bloom, Chesbro, and Williams)

February 21, 2013

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An act to add Chapter 6.6 (commencing with Section 42391) to Part 3 of Division 30 of the Public Resources Code, relating to recycling.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 529, as introduced, Leno. Recycling: fast food facilities.

The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, requires every rigid plastic packaging container, as defined, sold or offered for sale in this state to generally meet one of specified criteria.

This bill would enact the Plastic and Marine Pollution Reduction, Recycling, and Composting Act and would define terms for the purposes of that act.

The bill would define the term “fast food facility” with reference to specified federal requirements for the posting of calories and nutrients imposed upon restaurants and other retail food establishments. The bill would prohibit a fast food facility, on and after July 1, 2014, from distributing disposable food service packaging or a single-use carryout bag to a consumer, unless the disposable food service packaging or single-use carryout bag meets the criteria for either compostable packaging or recyclable packaging specified in the bill. The bill would also prohibit such a facility, on and after July 1, 2016, from distributing disposable food service packaging or a single-use carryout bag to a consumer, unless the fast food facility demonstrates to satisfaction of the department that the disposable food service packaging or single-use carryout bag is recovered for composting or recovered for recycling at

a rate of 25 percent or more, at a rate of 50 percent on and after July 1, 2018, and at a rate of 75 percent or more on or after July 1, 2020

The bill would provide for the imposition of a civil penalty upon a person in violation of the act and would require the department to publish annually a list setting forth any penalties that have been levied against a violator of this act.

This bill would require the department to deposit all penalties paid pursuant to the act into the Marine Pollution Reduction Account, which the bill would create in the Integrated Waste Management Fund in the State Treasury. The bill would authorize the department to expend the moneys deposited in the account, upon appropriation by the Legislature, to provide public education and assist local governmental agencies in efforts to reduce plastic waste and marine pollution, and for the department's costs of implementing the act.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Plastic and packaging waste represents a significant and
- 4 fast-growing component of the state's waste stream. California
- 5 disposes of more than three million tons of plastic packaging waste
- 6 annually. Plastic is the fastest growing component of generated
- 7 waste, increasing from less than 5 percent in 1980 to more than
- 8 11 percent in 2003.
- 9 (b) With the sole exception of plastic beverage containers
- 10 covered by the California Beverage Containers Recycling and
- 11 Litter Reduction Act, little of generated plastic is currently
- 12 recycled. Excluding beverage containers, less than 5 percent of
- 13 plastic packaging is currently recycled.
- 14 (c) Disposable food service packaging is used "on the go" when
- 15 access to trash and recycling receptacles is most limited. Plastics
- 16 generally can become inadvertent litter even if initially properly
- 17 discarded, and are carried by wind from uncovered trash cans and
- 18 dumpsters, vehicles, and solid waste facilities, including landfills.
- 19 (d) Compounding the problem of plastic packaging waste is
- 20 that this material is nonbiodegradable.

1 (e) The United States Environmental Protection Agency  
2 estimates that upwards of 80 percent of litter and marine pollution  
3 originates from land-based human activities, including littering,  
4 stormwater runoff, and ineffective waste disposal practices.

5 (f) Data collected during California's annual Coastal Cleanup  
6 Day indicate that plastic and other disposable food service  
7 packaging represent some of the most commonly littered items.

8 (g) Each year thousands of Californians volunteer countless  
9 hours to clean up plastic and other disposable food service  
10 packaging litter from public roadways, beaches, parks, and other  
11 areas of the state.

12 (h) Under a consent decree entered into by the Region IX of the  
13 United States Environmental Protection Agency and several  
14 environmental groups on March 22, 1999, (*Heal the Bay et al v.*  
15 *Browner* (98-4825 SBA)), among other things, a Total Maximum  
16 Daily Load (TMDL) for trash is required to be developed for all  
17 impaired waters within the state within the next decade. Adopted  
18 and proposed TMDLs have required that the amount of trash be  
19 reduced to zero to protect beneficial uses. The State Water  
20 Resources Control Board is also drafting a statewide policy on  
21 trash.

22 (i) The costs to state agencies and local governments to comply  
23 with existing TMDL requirements, pending TMDL requirements,  
24 or the TMDL requirements yet to be developed, will run into  
25 billions of dollars.

26 (j) The benefits of reducing, recycling, and composting plastic  
27 and other disposable food service packaging will have a direct  
28 positive impact on the California economy.

29 (k) In 2012, the California Ocean Protection Council determined  
30 that ocean-dependent industries add more than forty billion dollars  
31 (\$40,000,000,000) to California's economy. A 2005 report by the  
32 National Ocean Economics Program estimated more than 400,000  
33 jobs are based on coastal tourism and recreation, with combined  
34 wages of nearly ten billion dollars (\$10,000,000,000).

35 (l) Nondegradable plastics, including, but not limited to,  
36 polystyrene and other disposable food service packaging, and the  
37 resulting marine pollution pose a threat to water quality and marine  
38 wildlife through ingestion and entanglement. A 2012 study by the  
39 Convention on Biological Diversity estimated that 663 species

1 were affected by plastic marine pollution through entanglement  
2 or ingestion, a 40 percent increase from 1998 estimates.

3 (m) It is the intent of the Legislature, in adopting this act, to  
4 reduce a primary source of marine pollution by increasing the  
5 diversion of plastic and other disposable food service packaging.

6 SEC. 2. Chapter 6.6 (commencing with Section 42391) is added  
7 to Part 3 of Division 30 of the Public Resources Code, to read:

8  
9 CHAPTER 6.6. PLASTIC AND MARINE POLLUTION REDUCTION,  
10 RECYCLING, AND COMPOSTING ACT

11  
12 Article 1. General Provisions

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14 42391. This chapter shall be known, and may be cited, as the  
15 “Plastic and Marine Pollution Reduction, Recycling, and  
16 Composting Act.”

17 42392. It is the intent of the Legislature, consistent with the  
18 number one recommendation in the state-funded report  
19 “Eliminating Land-based Discharges of Marine Debris in  
20 California,” to designate responsibility and authority for reduction  
21 of marine debris and its sources to a state agency.

22  
23 Article 2. Definitions

24  
25 42393. For the purposes of this chapter, the following terms  
26 have the following meanings:

27 (a) “Compostable packaging” means a material that meets all  
28 of the following criteria:

29 (1) The packaging distributed with food for in-store consumption  
30 by the fast food facility is accepted back for composting by that  
31 fast food facility.

32 (2) The packaging is accepted for composting in a residential  
33 collection program available to at least 75 percent of the households  
34 in the jurisdiction in which it is distributed, as determined by the  
35 department.

36 (3) The packaging is made of a material that meets the American  
37 Society for Testing and Materials (ASTM) Standard Specification  
38 for Compostable Plastics D6400, as published in September 2004.  
39 For purposes of this paragraph, an ASTM standard specification

1 does not include an ASTM Standard Guide, a Standard Practice,  
2 or a Standard Test Method.

3 (b) (1) “Disposable food service packaging” means single-use  
4 disposable products used by a fast food facility for serving or  
5 transporting prepared and ready-to-consume food or beverages.

6 (2) “Disposable food service packaging” includes, but is not  
7 limited to, plates, cups, bowls, trays, and hinged or lidded  
8 containers.

9 (c) “Disposable food service packaging” does not include such  
10 single-use disposable items such as straws, cup lids, or utensils,  
11 or single-use disposable packaging for unprepared foods.

12 (d) “Fast food facility” means a food facility subject to Section  
13 343(q)(5)(H) of Title 21 of the United States Code or subject to  
14 Section 114094 of the Health and Safety Code, as it read on  
15 January 1, 2013.

16 (e) “Food facility” has the same meaning as defined in Section  
17 113789 of the Health and Safety Code.

18 (f) (1) “Prepared food” means ready-to-consume food or  
19 beverage prepared on the fast food facility’s premises, using a  
20 cooking or food preparation technique.

21 (2) “Prepared food” does not include raw uncooked meat, fish,  
22 or eggs, unless the item is provided for consumption without further  
23 food preparation.

24 (g) “Recyclable packaging” means a material that meets all of  
25 the following criteria:

26 (1) The packaging distributed with food for in-store consumption  
27 by the fast food facility is accepted back for recycling by that fast  
28 food facility.

29 (2) The packaging is accepted for recycling in a residential  
30 collection program available to at least 75 percent of the households  
31 in the jurisdiction in which it is distributed, as determined by the  
32 department.

33 (h) “Single-use carryout bag” means a carryout bag provided  
34 by a fast food facility to a customer to contain prepared food at  
35 the point of sale.

Article 3. Packaging Waste Reduction and Recycling  
Responsibilities

42394. (a) On and after July 1, 2014, a fast food facility shall not distribute disposable food service packaging or a single-use carryout bag to a consumer, unless the disposable food service packaging or single-use carryout bag meets the criteria for either compostable packaging or recyclable packaging.

(b) On and after July 1, 2016, a fast food facility shall not distribute disposable food service packaging or a single-use carryout bag to a consumer, unless the fast food facility demonstrates to the satisfaction of the department that the disposable food service packaging or single-use carryout bag is recovered for composting or recovered for recycling at a rate of 25 percent or more.

(c) On and after July 1, 2018, a fast food facility shall not distribute disposable food service packaging or a single-use carryout bag to a consumer, unless the fast food facility demonstrates to the satisfaction of the department that the disposable food service packaging or single-use carryout bag is recovered for composting or recovered for recycling at a rate of 50 percent or more.

(d) On and after July 1, 2020, a fast food facility shall not distribute disposable food service packaging or a single-use carryout bag to a consumer, unless the fast food facility demonstrates to the satisfaction of the department that the disposable food service packaging or single-use carryout bag is recovered for composting or recovered for recycling at a rate of 75 percent or more.

Article 4. Penalties

42395. (a) A person who violates this chapter is subject to a civil penalty of not more than one hundred dollars (\$100) for each day the person is in violation of this chapter.

(b) The total annual penalties assessed upon a violator of this chapter shall not exceed ten thousand dollars (\$10,000).

(c) On or before July 1, 2015, and on or before July 1 annually thereafter, the department shall publish a list setting forth any penalties that have been levied against a violator of this chapter

1 in the preceding calendar year, for failure to comply with the  
2 requirements of this chapter.

3 (d) The department shall deposit all penalties or fines paid  
4 pursuant to this section into the Marine Pollution Reduction  
5 Account, which is hereby created in the Integrated Waste  
6 Management Fund in the State Treasury. The moneys deposited  
7 in the Marine Pollution Reduction Account may be expended by  
8 the department, upon appropriation by the Legislature, to provide  
9 public education and assist local governmental agencies in efforts  
10 to reduce plastic waste and marine debris, and for the department's  
11 costs of implementing this chapter.